IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 366 of 1999
in
SPECIAL CIVIL APPLICATION No. 11192 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

R A NAIR

Versus

COMMISSIONER OF EMPLOYMENT & TRAINING

Appearance:

1. LETTERS PATENT APPEAL No. 366 of 1999
MR NK MAJMUDAR for Appellant No.
NOTICE SERVED BY DS for Respondent No. 1
Mr. HH Jani, AGP for Respondent No. 2

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE K.A.PUJ

Date of decision: 24/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

By this Appeal under Clause 15 of the Letters Patent, the challenge is against the judgment of the learned Single Judge in Special Civil Application No. 11192 of 1998 recorded on 1-2-1999 whereby the petition came to be dismissed in limine on the question of seniority of the appellant.

2. We have been taken through the material and relevant entire record, in course of the submissions, by learned advocate, Mr. Majmudar, but unsuccessfully in persuading us, that the view taken by the learned Single on the point of seniority is faulty. There is no dispute about the fact that the appellant, original-petitioner, passed the requisite examination in July 1979. Thereafter, the appointment order dated 8-9-1981 came to be passed in which it is specifically stated that the appointment is ad-hoc and on probation for a period of one year. Therefore, after the completion of the probation period, the regular appointment on officiating basis came to be recorded in the service record with effect from 1-8-1982. How could, therefore, a plea of giving seniority, with effect from 1979 or 1981, could be said to be just and reasonable and acceptable. The learned Single Judge has taken into account the factual profile in the latest proposition of law and has rightly rejected the petition in limine.

3. The reliance, on decision of the Apex Court in case of The Direct Recruit Class-II Engineering Officers' Association and others v. State of Maharashtra and others - AIR 1990 S.C. 1607, is also of not avail to the appellant as in Para 44 it is specifically summed up and observed that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. It is further observed that, "the corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement,[as in the present case] the officiation in such post cannot be taken into account for considering the seniority.

4. Reliance is also placed on the decision of the Hon'ble Apex Court rendered in S.L. Chandrakishore Singh vs. State of Manipur and Others - AIR 1999 S.C. 3616. After having given our anxious consideration and dispassionate thoughts to the ratio propounded in this decision, we have no hesitation in recording that the said decision is not applicable to the present appeal in

view of the peculiar factual scenario and profile emerging from the record of the present case. On the contrary, we have noticed that it has been observed that "Seniority itself based upon length of service is an acquired right of en employee which entitled him to be considered for further promotion. It is generally regulated by Service Rules. Such rules normally provide for determined seniority with reference to the date of appointment to the class, category and grade to which the appointment is made. It is determined only on the basis of the length of service. Such length of service may be on the basis of the difference of continuous officiation or on the basis of the difference of substantive appointment in the cadre or grade or service which may be reckoned from the date of confirmation on the basis of regularisation. It is now well-settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Relying on this decision, it was contended that the appellant is entitled to the seniority at least from the date of 1981. This submission is also misconceived. It is an admitted fact that there is no confirmation of the appellant on the said post. On the contrary, the long term officiation order which appellant was given stipulates otherwise and therefore the said decision also does not render any assistance to the appellant.

5. In view of the aforesaid facts and circumstances and the latest proposition of law, the appeal is without any substance and deserves to be dismissed at the threshold. Accordingly, it is dismissed.

[J.N. Bhatt, J.]

rmr. [K.A. Puj, J.]